WAN YAHYU WAN ABDULLAH & ANOR

v.

MOHAMAD ALI

HIGH COURT MALAYA, KUALA TERENGGANU
NIK HASHIM J
[ORIGINATING MOTION NO: 25-02-2001]
15 AUGUST 2001

CIVIL PROCEDURE: *Notice of appeal - Notice filed out of time - Notice rejected by registrar - Whether proper - Whether outside of 14-day time limit - Whether receipt of notice on last day for filing of notice could be considered as filing under O. 49 r. 2 of the Subordinate Courts Rules 1980 - When notice considered properly filed under the rule - Principles to be applied - MAE Sdn Bhd & Ors v. Perwira Habib Bank Malaysia Bhd, Kuala Terengganu*

Dissatisfied with the decision on quantum for an earlier case, the appellants on 29 August 2000 sent a notice of appeal (the 'notice') to the court. The court acknowledged receipt of the notice on 30 August 2000, which apparently was the last day for filing the notice. The registrar rejected the notice on the ground that the notice together with its filing fee was filed on 3 September 2000, as it could not have been filed earlier since 31 August, 1 and 2 September 2000 were public holidays in Terengganu. The registrar cited the case *MAE Sdn Bhd & Ors v. Perwira Habib Bank Malaysia Bhd, Kuala Terengganu* in support of her action. Consequently, the appellants filed in this court, a motion for an order of extension of time to enable the appellants to file the notice out of time. In the event, the motion was allowed accordingly. The issues raised here for consideration were; (i) whether the receipt of the notice on 30 August 2000 could be considered as filing under O. 49 r. 2 of the Subordinate Courts Rules 1980 (the 'SCR'); (ii) when the notice is considered properly filed under the rule; (iii) whether the registrar was right to reject the notice.

Held:

[1] Receipt is not synonymous with filing. The notice is considered properly filed under O. 49 r. 2 of the SCR only if the notice and its filing fee are in order and duly accepted by the court's registry and the notice is endorsed with the date filed within 14 days from the date on which the decision was pronounced.

[2] The determining event is the date of filing of the notice. On 30 August 2000, when the notice and filing fee reached the court, until they are processed and found to be in order and duly accepted by the court's registry and the notice is endorsed with the date filed, the appellants cannot as yet at that stage be considered to have filed the notice in accordance with O. 49 r. 2 of the SCR. Thus, since the notice was processed on 3 September 2000, a date outside the 14-day time limit, the registrar was therefore right in rejecting it. It followed also that the registrar was right in relying on the ruling in *MAE Sdn Bhd & Ors v. Perwira Habib Bank Malaysia Bhd, Kuala Terengganu.*

[Appellants application for motion allowed.]

Case(s) referred to:
MAE Sdn Bhd & Ors v. Perwira Habib Bank Malaysia Bhd, Kuala Terengganu [1999] 4 CLJ 709 ***(foll)***

Legislation referred to:
Rules of the High Court 1980, O. 3 r. 5, O. 20 r. 9
Subordinate Courts Rules 1980, O. 49 r. 2

For the appellants - SE Peters; M/s SN Fam & Co
For the respondent - Rosnah Zakaria; M/s Rushdi Yusop & Partners

Reported by Raja Vishnu Sivarajah

JUDGMENT

Nik Hashim J:

The appellants, who are the defendants in the main action brought by the respondent as plaintiff, appeal against the decision of the learned Sessions Court judge of 16 August 2000 holding the appellants 90% liable for the accident and awarded general damages as well as damages for loss of dependency and costs. Dissatisfied with the decision on quantum the appellants on 29 August 2000 sent the notice of appeal by courier service to the court and the court acknowledged receipt of the notice of appeal at about 11am on 30 August 2000 which was the last day for filing the notice of appeal.

On 12 October 2000 the Sessions Court registrar returned the notice of appeal to the appellants' solicitors notifying them that the notice of appeal together with its filing fee were processed and filed on 3 September 2000 as the notice of appeal could not be filed earlier as 31 August, 1 and 2 September 2000 were public holidays in the State of Terengganu: 31 August being the National Day holiday whereas 1 and 2 September 2000 were Friday and the first

Saturday monthly holiday for the public sector respectively. The registrar cited the case of *MAE Sdn Bhd & Ors v. Perwira Habib Bank Malaysia Bhd, Kuala Terengganu* [1999] 4 CLJ 709 in support of her action.

Consequently, the appellants filed a motion for an order for the extension of time under O. 3 r. 5 of the Rules of the High Court 1980 to enable the appellants to file the notice of appeal out of time. Learned counsel for the respondent had no objection to the motion. I, on 7 August 2001 allowed the notice of appeal to be filed and served within 14 days from the date of this order with costs in the cause.

However, this motion begs the question whether the receipt of the notice of appeal by the court on 30 August 2000 could be considered as filing under O. 49 r. 2 of the Subordinate Courts Rules 1980 (the SCR).

In my judgment, it could not. Receipt is not synonymous with filing. The notice of appeal is considered properly filed under O. 49 r. 2 of the SCR only if the notice of appeal and its filing fee are in order and duly accepted by the court's registry and the notice of appeal is endorsed with the date filed within 14 days from the date on which the decision was pronounced.

In *MAE Sdn Bhd, supra*, a question arose as to whether, in the context of O. 20 r. 9 of the Rules of the High Court 1980 (the RHC), the original statement of claim was amended by the respondents on 13 April 1994 or 18 April 1994. The facts were that on 3 April 1994 the court granted the respondents leave to amend their original statement of claim. The order did not specify the period within which the pleadings were to be amended, and that being so, the 14-day period under O. 20 r. 9 of the RHC applied with the result that the amendment must be filed not later than 17 April 1994. It was put in evidence that by letter dated 7 April 1994, the respondents sent the amended pleadings to the court together with the necessary fee. However, the documents, although received by the registrar on 13 April 1994, were formally filed on 18 April 1994. His Lordship Abdul Kadir Sulaiman J (as he then was) ruled that:

> [1a] As of 13 April 1994, when the documents and the Postal Order for RM20 reached the office of the Registrar, they remained the property of the respondents. This is so because until the documents are filed the sum paid does not yet become officially accounted for. For that reason, the respondents cannot as yet at that stage be considered to have complied with the requirements of O. 20 r. 9 of the RHC.
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> [2] The evidence necessary to establish that the respondents has done something which is required to be done in their business with the court is the date of the filing of the relevant documents at the Court's registry.

This according to the evidence was done on 18 April 1994. Therefore, for the purpose of O. 20 r. 9 RHC, the respondents must be taken to have amended their pleading only on 18 April 1994, which is clearly outside the requirement of the said order which renders the amendment ineffective.

With respect, I agree with the ruling of the learned judge.

The determining event in the instant case is the date of filing of the notice of appeal. As of 30 August 2000, when the notice of appeal and the cheque for RM100 reached the court, until they are processed and found to be in order and duly accepted by the court's registry and the notice of appeal is endorsed with the date filed, the appellants cannot as yet at that stage be considered to have filed the notice of appeal in accordance with O. 49 r. 2 of the SCR. Thus, since the notice of appeal was processed on 3 September 2000, a date outside the 14-day time limit, the registrar was therefore right to reject it.

In the event, I allowed the motion accordingly.